

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Release Performance & Payment Agreement w/ Letter of Credit for Maple Leaf Commerce Center

DEPARTMENT: Environmental Services

DIVISION: Business Office

AUTHORIZED BY: John Cirello

CONTACT: Becky Noggle

EXT: 2143

MOTION/RECOMMENDATION:

Authorize the release of the Performance and Payment Agreement with Letter of Credit #55101928 in the amount of \$67,000.00 for the project known as Maple Leaf Commerce Center.

District 1 Bob Dallari

Bob Briggs

BACKGROUND:

Performance Bond # 55101928 in the amount of \$67,000.00 was required as part of the Land Development Code Section 35.44 (e) Additional Required Legal Submittals (1) Bonds to secure the construction and completion of the Maple Leaf Commerce Center improvements.

The Performance Bond was replaced with a 2-year Cash Maintenance Bond to ensure the maintenance of the project improvements. Staff has conducted the final construction inspection and found that all construction requirements were completed per the approved final engineering plan.

STAFF RECOMMENDATION:

Staff recommends the Board to authorize the release of the Performance and Payment Agreement with Letter of Credit for Maple Leaf Commerce Center.

ATTACHMENTS:

1. Performance Bond

Additionally Reviewed By: No additional reviews

Performance and Payment Agreement
(Water and Sewer Improvements)

THIS AGREEMENT is made and entered into this 19 day of NOVEMBER, 2007, between INDRUNAS ENTERPRISES, hereinafter referred to as "DEVELOPER" Developer of MAPLE LEAF COMMERCE CENTER and SEMINOLE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY".

WITNESSETH:

1. The DEVELOPER hereby delivers to the COUNTY, an irrevocable Letter of Credit No. 55101938 of Regions Bank in the sum of \$ 67,000 to guarantee full completion land payment for all water and sewer improvements set forth on the approved plans and specifications for the above development.
2. The COUNTY agrees to accept the Irrevocable Letter of Credit and to return and draw on same in the following manner:
 - a. To return to Regions Bank upon request by DEVELOPER and proof satisfactory to the COUNTY that work has been completed in accordance with all applicable requirements, said proof to include a certificate to that effect signed by the DEVELOPER, the DEVELOPER'S Engineer, the COUNTY'S Director of Environmental Services and, upon proof satisfactory to the COUNTY that all bills thereof have been paid, including, but not limited to, bills for surveying, engineering and land clearing, and work and materials used in the construction of water and sewer lines and other required improvements which are included in the plans and specifications for the said development.
 - b. To draw upon the Letter of Credit in accordance with its terms upon a determination that any portion or all of the improvements have not been completed in accordance with the approved plans and specifications within 180 calendar days from the date of this Agreement; provided, however, that if the work is not completed within 180 days and the DEVELOPER has made substantial progress towards completion of the required improvements and is prosecuting completion of the work and the public interest is served thereby, the COUNTY may extend the time for performance hereunder to a time no later than thirty (30) days prior to the expiration date of the Letter of Credit. The COUNTY is hereby authorized, but not obligated to take over and perform or cause to be performed any such uncompleted work and to use for such purposes the funds available under said Letter of Credit to reimburse the COUNTY the total costs thereof, including, but not limited to, engineering, legal and contingent costs, together with any damages, either direct or consequential, which may be sustained on account of DEVELOPER'S failure to perform in accordance with this Agreement.
 - c. The COUNTY is authorized to draw on the Letter of Credit to pay any bills for said improvements upon proof satisfactory to the COUNTY that such claims are just and unpaid and the DEVELOPER hereby consents to any such payments and authorizes and ratifies any such action on the part of the COUNTY and agrees to protect and save harmless the COUNTY from any claims of any persons whomsoever on account of any improvements which have not been completed or paid for or which have been completed or paid for by the COUNTY.

ATTEST:

_____, Secretary

DEVELOPER:

By: _____

_____, President

WITNESSES:

Betty N. [Signature]
Sheena [Signature]

Department of Environmental Services
Utilities Division
Seminole County, Florida

[Signature]
Utilities Manager

Date: 11/29/07

Within authority delegated by the County Manager pursuant to Resolution No. 97-R-66 adopted March 11, 1997 and further delegated by Memorandum dated March 27, 1997, Re: Streamlining of Development-Related Agenda items and approved on April 2, 1997.

STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this 29 day of November, 2007 by Gary Lee Rudolph, the Utilities Manager of SEMINOLE COUNTY, a political subdivision of the State of Florida, on behalf of the County. He/she is personally known to me or has produced _____ as identification.



SHEENA RENA BRITTON-MCKINNEY
MY COMMISSION # DD 488315
EXPIRES: November 6, 2009
Bonded Thru Budget Notary Services

[Signature]
Notary Seal

REGIONS SM

BANK

417 NORTH 20TH STREET, 5TH FL, BIRMINGHAM, ALABAMA 35203
PHONE (866) 828-6928 FAX (205) 801-5788
S.W.I.F.T. UPNBUS44MIA TELEX 6737871 UPBMIA

BENEFICIARY:

SEMINOLE COUNTY BOARD OF
COUNTY COMMISSIONERS
SEMINOLE COUNTY SERVICES BUILDING
1101 EAST FIRST STREET
SANFORD, FLORIDA 32771

APPLICANT:

INDRUNAS ENTERPRISES, LLC
435 AVELN AVE C
OVIDO, FL 32765

IRREVOCABLE LETTER OF CREDIT NO. 55101928

DEAR COMMISSIONERS:

BY ORDER OF INDRUNAS ENTERPRISES, LLC, WE HEREBY ESTABLISH AN IRREVOCABLE LETTER OF CREDIT IN YOUR FAVOR. WE HEREBY AUTHORIZE YOU TO DRAW ON REGIONS BANK UP TO AN AGGREGATE AMOUNT OF USD\$67,000.00 AVAILABLE BY YOUR DRAFTS AT SIGHT ACCOMPANIED BY A SIGNED STATEMENT OF THE BOARD OF COUNTY COMMISSIONERS THAT THE PERFORMANCE AND PAYMENT AGREEMENT DATED NOVEMBER 19, 2007, BETWEEN INDRUNAS ENTERPRISES, LLC AND SEMINOLE COUNTY IS IN DEFAULT.

DRAFTS MUST BE DRAWN AND NEGOTIATED ON OR BEFORE NOVEMBER 26, 2008, AND EACH DRAFT MUST STATE THAT IT IS DRAWN UNDER IRREVOCABLE LETTER OF CREDIT NO. 55101928 OF REGIONS BANK, DATED NOVEMBER 26, 2007, AND THE AMOUNT THEREOF ENDORSED ON THIS LETTER OF CREDIT. THE BANK AGREES THAT THIS LETTER OF CREDIT SHALL AUTOMATICALLY RENEW ITSELF FOR SUCCESSIVE ONE YEAR PERIODS UNLESS THE BANK SHALL GIVE NOTICE TO YOU NO LATER THAN FORTY FIVE (45) DAYS PRECEDING AN EXPIRATION DATE THAT IT CHOOSES NOT TO RENEW THE LETTER OF CREDIT, IN WHICH THE COUNTY SHALL BE ENTITLED TO DEMAND AND RECEIVE THE OUTSTANDING AMOUNT OF MONEY REPRESENTED BY THIS LETTER OF CREDIT. IN THE EVENT OF A DRAW BASED ON EXPIRATION OF THIS LETTER OF CREDIT, THE PROCEEDS SHALL BE HELD BY SEMINOLE COUNTY AS A CASH BOND TO SECURE CONTINUED ADHERENCE TO THE TERMS OF THE PERFORMANCE AND PAYMENT AGREEMENT WITH INDRUNAS ENTERPRISES, LLC.

UPON TENDER OF PAYMENT, YOU WILL RELEASE TO THE BANK THE ORIGINAL IRREVOCABLE LETTER OF CREDIT MARKED "CANCELED". IN ANY EVENT, UPON EXPIRATION OR AT ANY TIME AFTER THE COMPLETION OF THE PERFORMANCE AND PAYMENT AGREEMENT DATED NOVEMBER 19, 2007, TO THE SATISFACTION OF THE BOARD OF COUNTY COMMISSIONERS EVIDENCED BY A WRITTEN ACCEPTANCE OF THE REQUIRED IMPROVEMENTS COVERED BY SAID PERFORMANCE AND PAYMENT AGREEMENT, YOU WILL RETURN THE ORIGINAL IRREVOCABLE LETTER OF CREDIT TO THIS BANK MARKED "CANCELLED".

WE HEREBY ENGAGE WITH DRAWERS, ENDORSERS, AND BOND FIDE HOLDERS OF ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT, THAT SUCH DRAFTS WILL BE DULY HONORED UPON PRESENTATION TO THE DRAWEE.

FILED IN OFFICE
MARYANNE MORSE
CLERK CIRCUIT COURT
NOV 27 PM 3:16
SEMINOLE CO. FLA. D.C.

REGIONS SM

Our reference Number: 55101928

Page **BANK**

IF THE BOARD OF COUNTY COMMISSIONERS INITIATES SUIT UNDER THIS LETTER OF CREDIT, THE BANK HEREBY AGREES TO BE RESPONSIBLE FOR SEMINOLE COUNTY'S COURT COSTS AND REASONABLE ATTORNEY'S FEES, BUT REGIONS BANK SHALL NOT BE RESPONSIBLE FOR ANY ATTORNEY'S FEES IN EXCESS OF FIFTEEN PERCENT (15%) OF THE AGGREGATE AMOUNT OF THIS LETTER OF CREDIT.

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING AND SUCH UNDERTAKING SHALL NOT, IN ANY WAY, BE AMENDED BY REFERENCE HEREIN TO ANY AGREEMENT, AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT OR AGREEMENT OTHER THAN THE PERFORMANCE AND PAYMENT AGREEMENT DATED NOVEMBER 19, 2007, AND REFERENCED HEREIN.

A DISCREPANCY FEE OF \$75.00 WILL BE CHARGED ON ALL SETS OF DOCUMENTS PRESENTED THAT ARE NOT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE LETTER OF CREDIT EVEN IN INSTANCES WHERE CONFORMING DOCUMENTS MAY BE PRESENTED AT A LATER TIME.

THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES (ISP98) WHICH WAS EFFECTIVE JANUARY 1, 1999.



VERY TRULY YOURS,


AUTHORIZED SIGNATURE